

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 08-00730 WHA-12

v.

WALTER CHINCHILLA-LINAR,

Defendant.

**ORDER RE MOTION TO FIND  
WARDEN OF GILMER FCI IN  
CONTEMPT OF COURT**

Mr. Chinchilla-Linar has moved to hold the warden of Gilmer FCI in contempt for failure to address his medical conditions. These conditions and the apparent lack of care are troubling. The district courts, however, may only exercise contempt power in limited circumstances. Section 401 of Title 18 of the United States Code provides,

A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as--

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

1 The warden is not a party. He is not a witness. No order by the Court has been issued  
2 against the warden or the Bureau of Prisons for him to violate. Mr. Chinchilla-Linar has not  
3 articulated a valid basis for the Court's contempt power, so the Court lacks subject-matter  
4 jurisdiction. Mr. Chinchilla-Linar's proper remedy for any failure to provide medical care  
5 would be a civil suit.

6 The motion for contempt of court is **DENIED**.

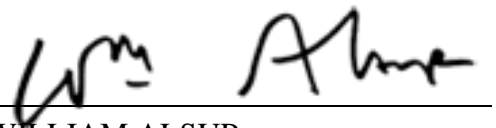
7 This order notes that Attorney Mazer has not filed a motion for compassionate release  
8 since his appointment on November 17, 2020, which was for the purpose of preparing a motion  
9 for compassionate release (Dkt. No. 6608).

10 It is now August 2021. The filing includes exhibits that reveal that Mr. Chinchilla-Linar  
11 *appears* to have exhausted his administrative remedies with the Bureau of Prisons. Mr.  
12 Chinchilla-Linar received responses denying his motion(s) in July 2020 and again in February  
13 2021. He appears to have appealed, in January 2021 the first (presumably) denial. The filing  
14 does not reveal whether that appeal was procedurally proper or if he has received a response.  
15 Mr. Chinchilla-Linar has since filed additional complaints about his lack of care with the  
16 prison, as has counsel (Dkt. No. 6729, Mazer Decl. Exhs. A, B).

17 Any motion for compassionate release shall be due no later than **SEPTEMBER 29**. Any  
18 opposition will be due October 13, and any reply October 20. A hearing will be held  
19 **OCTOBER 26 AT 2:00 P.M.**

20  
21 **IT IS SO ORDERED.**

22  
23 Dated: August 30, 2021.

24  
25   
26 WILLIAM ALSUP  
27 UNITED STATES DISTRICT JUDGE  
28